

Message Text

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PAGE 01 MUNICH 00193 01 OF 02 131322Z

ACTION L-03

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TRSE-00 OMB-01 SEC-01 PM-05 DODE-00 CA-01 /035 W

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R 131307Z JAN 78

FM AMCONSUL MUNICH

TO SECSTATE WASHDC 9687

AMEMBASSY BONN

UNCLAS SECTION 01 OF 02 MUNICH 00193

SECSTATE PASS TO FOREIGN CLAIMS SETTLEMENT COMMISSION

SECSTATE FOR L

BONN FOR PFUND

FROM CHARIG, AMCONSUL MUNICH

SUBJECT: OVERLAPPING CLAIMS - GERMAN ADMIN COURT DECISIONS

1. AFTER TELECON WITH PETER H. PFUND, AMEMBASSY BONN, ON DEC 30, 1977 I OBTAINED INFORMATION ON SUBJECT MATTER AND AT MR. PFUND'S REQUEST AM REPORTING BY CABLE ON RESULTS OF MY INQUIRIES, PRINCIPALLY WITH KARL-HEINZ HINTZ, GERMAN ATTORNEY, WHO REPRESENTS DR. MED. HANS W. FREYMUTH OF HOPEWELL, NEW JERSEY. HINTZ GAVE ME COPY OF 12 PAGE COURT OPINION DTD SEP 13, 1977 AND FURNISHED MUCH ADDITIONAL INFORMATION. AM MAILING COPIES OF OPINION TO ADDRESSEES OF THIS MSG. REQUEST THAT ENGLISH TRANSLATION PLS BE PREPARED SOONEST BY STATE DEPARTMENT WASHDC. TRANSLATION TO BE DISTRIBUTED TO ADDRESSEES AND ME.

2. FREYMUTH DECISION WAS ORALLY ANNOUNCED BY BERLIN ADMINISTRATIVE COURT SEP 13, 1977, THE DATE OF FINAL ARGUMENTS, BUT WRITTEN OPINION WAS SERVED ONLY SATURDAY, NOV 19, 1977. DECISION HELD IN SUBSTANCE THAT GERMAN STATUTES PROVIDING FOR REOPENING OF GERMAN EQUALIZATION
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PAGE 02 MUNICH 00193 01 OF 02 131322Z

PROCEEDINGS FOR PURPOSE OF OBTAINING REIMBURSEMENT FROM CLAIMANTS FOR COMPENSATION PAID THEM BY THIRD PARTIES OR OTHER COUNTRIES, ARE NOT YET INVOKED BY REASON OF U.S. PUBLIC LAW 94-542, WHICH MERELY PROVIDES FOR DAMAGE DETERMINATION WHEREBY FUTURE PAYMENTS MAY OR MAY NOT BE MADE. GERMAN LEGISLATORS PROVIDED FOR SUBSEQUENT REOPENING OF PROCEEDINGS AFTER POSSIBLE OTHER

COMPENSATION (E.G. THROUGH AMERICAN PROGRAM) IS RECEIVED. GERMAN AUTHORITIES ARE NOT RPT NOT AUTHORIZED TO SUSPEND OR UNDULY DELAY DECISION ESTABLISHING CLAIMANTS' ENTITLEMENT TO COMPENSATION, ANYWAY, NOT BY REASON OF PL 94-542. NOTE THAT COURT DECISION DOES NOT CONSTITUTE ORDER FOR PAYMENT OF COMPENSATION. HOWEVER, SUCH ORDER COULD READILY BE OBTAINED BY A SUCCESSFUL PLAINTIFF. THE DECISION RENDERED, IF IT BECOMES FINAL, DECIDED THE CRUCIAL PRINCIPLES AFFECTING OVERLAPPING CLAIMS.

3. FREYMUTH DECISION ALSO RULED THAT REVIEW TO FEDERAL ADMINISTRATIVE COURT NOT RPT NOT AUTHORIZED "BECAUSE THE MATTER FAILS TO RAISE LEGAL ISSUES OF BASIC IMPORTANCE". AGAINST SUCH DENIAL OF REVIEW DEFENDANT "LAND BERLIN" COULD FILE OBJECTIONS WITHIN ONE MONTH, WHICH IT DID DEC 20, 1977. TO DATE REASONS OF OBJECTIONS NOT RPT NOT KNOWN TO ATTORNEY HINTZ. ON JAN 5 HINTZ RECEIVED NOTICE FROM ADMINISTRATIVE COURT BERLIN THAT IT DECIDED TO REJECT DEFENDANT'S OBJECTIONS TO DENIAL OF REVIEW AND FORWARDED FILE WITH OBJECTIONS TO FEDERAL ADMIN COURT WHICH WILL RULE ON OBJECTIONS, PROBABLY IN TWO TO EIGHT MONTHS. (IN MATTERS INVOLVING EQUALIZATION AUTHORITIES, DECISIONS OF ADMIN COURTS GO DIRECTLY FOR REVIEW TO FEDERAL ADMIN COURT, IF RPT IF REVIEW AUTHORIZED. NO RPT NO APPEAL TO UPPER ADMIN COURTS IS UNCLASSIFIED

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PAGE 03 MUNICH 00193 01 OF 02 131322Z

PERMITTED). WAS INFORMED TODAY THAT REPRESENTATIVE OF EQUALIZATION FUND, WHO ALSO PARTY IN LITIGATION ALTHOUGH NOT RPT NOT DEFENDANT, HAS FILED OBJECTIONS AND REVIEW. SUCH REVIEW, TEXT OF WHICH NOT YET KNOWN, COULD ONLY BE BASED ON ALLEGED SERIOUS PROCEDURAL ERROR BY LOWER COURT. ATTORNEY HINTZ BELIEVES FEDERAL ADMIN COURT WILL REJECT SUCH OBJECTIONS AND REVIEW JUST AS HE BELIEVES IT WILL REJECT DEFENDANT'S OBJECTIONS.

4. HINTZ ADDED HE REPRESENTS THREE OTHER AMERICAN CLAIMANTS IN ADMIN COURT BERLIN IN SIMILAR CASES. ON NOV 22, 1977 COURT ANNOUNCED DECISIONS IN FAVOR OF ALL THREE PLAINTIFFS, BUT BY LAST WEEK COURT HAD NOT YET SERVED WRITTEN OPINIONS, THUS TIME LIMIT FOR FILING OBJECTIONS HAD NOT STARTED TO RUN. (UPDATE: TODAY HINTZ SAID WRITTEN OPINION IN ONE ADDTL CASE JUST RECEIVED, IT IS ALMOST IDENTICAL TO FREYMUTH OPINION). I UNDERSTAND OTHER GERMAN ATTORNEYS REPRESENT ADDITIONAL AMERICAN CLAIMANTS IN ADMIN COURT PROCEEDINGS. WILL MAKE INQUIRIES.

5. HINTZ SAID HE SEES NO RPT NO INDICATION AS PART

OF THE COURT PROCEEDINGS THAT GERMAN AUTHORITIES PREPARED TO "THROW IN TOWEL", BUT INSTEAD BELIEVES THEY OPPOSING VIGOROUSLY. (ON OTHER HAND, ONE EQUALIZATION OFFICIAL, NOT OF BAA, SAID HE THOUGHT BAA SEEMS GETTING CLOSE TO ORDERING THE STOP LIFTED). GERMAN GOV ATTORNEYS SUGGESTED IN COURT SEP 13, 1977 THAT LITIGATION BE SUSPENDED FOR AT LEAST SIX MONTHS, WHICH SHOULD SUFFICE TO ALLOW A GOV TO GOV SOLUTION WHICH, THEY ASSERTED, IS BEING ENDEAVORED BETWEEN FED EQUALIZATION OFFICE (BAA), FEDREP MINISTRY OF FINANCE AND FOREIGN OFFICE ON ONE HAND AND US AUTHORITIES ON OTHER HAND. HINTZ OPPOSED SUSPENSION AND COURT BACKED

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PAGE 01 MUNICH 00193 02 OF 02 131323Z
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TO SECSTATE WASHDC 9688
AMEMBASSY BONN

UNCLAS SECTION 02 OF 02 MUNICH 00193

SECSTATE PASS TO FOREIGN CLAIMS SETTLEMENT COMMISSION
SECSTATE FOR L

HIM UP.

6. SUCH EFFORT OF POSTPONEMENT AND SEVERAL LETTERS OF BAA TO FCSC INDICATE THAT GERMAN AUTHORITIES INTERESTED IN AVOIDING FINAL ADMIN COURT DECISIONS FINDING CURRENT DECISION AND PAYMENT STOP CONTRARY TO GERMAN LAW. IN THOSE (UNSOLICITED) LTRS BAA WISHES FCSC TO STATE WHETHER OR NOT CLAIMANTS QUALIFY FOR AWARDS UNDER PL 94-542. I HAPPEN TO KNOW THAT BAA - IN EVENT FCSC WRITES THAT CLAIMANTS TO NOT RPT NOT SO QUALIFY - WISHES TO PAY DR. FREYMUTH AND OTHERS BEFORE RPT BEFORE FINAL ADMIN COURT DECISIONS ARE RENDERED.

7. THE IMPLICATIONS OF THE FREYMUTH AND OTHER DECISIONS, PARTICULARLY IF THEY BECOME FINAL, AS A SOLUTION OF THE PROBLEMS CREATED BY THE GERMAN STOP ORDER SHOULD BE CONSIDERED AND EVALUATED CAREFULLY. WHILE FCSC PRESUMABLY

DOES NOT SEEK RESPONSIBILITY FOR GOV TO GOV CONTACTS ON
THIS PROBLEM, FCSC IS OF COURSE INEXTRICABLY INVOLVED,
AS IT MUST EXAMINE AND ADJUDICATE THE CLAIMS OF US
NATIONALS IAW PL 94-542. IT SEEMS INTER-AGENCY TALKS OR
COORDINATION ADVISABLE BEFORE NEXT CONTACT WITH
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PAGE 02 MUNICH 00193 02 OF 02 131323Z

FEDREP ON GOV TO GOV LEVEL.

8. MY CONTACTS WITH THE FEDERAL EQUALIZATION OFFICE AND
OTHER OFFICES SUPERVISED BY BAA SERVE PURPOSE OF FACT
FINDING AND INVESTIGATION OF AMERICAN CLAIMS UNDER PL
94-542. I ALWAYS MADE THIS AMPLY CLEAR TO EQUALIZATION
OFFICE AND GERMAN OFFICIALS ALWAYS ACKNOWLEDGED
THEY FULLY UNDERSTOOD THIS. FCSC THROUGH THESE CONTACTS
AT "TECHNICIANS' LEVAL" RECEIVES VALUABLE ASSISTANCE
WHICH IS INDISPENSABLE IN CARRYING OUT MANDATE
OF CONGRESS TO "DETERMINE...VALIDITY AND AMOUNTS OF
CLAIMS...". BETTS

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